

# **EXHIBIT 4**

10KSB 1 form10ksb.htm CHARYS HOLDINGS 10KSB 4-30-2007

**SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM 10-KSB**

(Mark One)

- ☒ ANNUAL REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE FISCAL YEAR ENDED APRIL 30, 2007.
- ☐ TRANSITION REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_

Commission File No. 000-18292

**CHARYS HOLDING COMPANY, INC.**

(Name of small business issuer in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or organization)

**54-2152284**  
(I.R.S. Employer Identification No.)

**1117 Perimeter Center West, Suite N415**  
**Atlanta, Georgia**  
(Address of principal executive offices)

**30338**  
(Zip Code)

Registrant's telephone number, including area code: **(678) 443-2300**

Securities registered under Section 12(b) of the Exchange Act: **None.**

Securities registered under Section 12(g) of the Exchange Act: **Common stock, par value \$0.001 per share.**

(Title of class)

Check whether the issuer is not required to file reports pursuant to Section 13 or 15 (d) of the Exchange Act. ☐

Check whether the issuer (1) has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Check if there is no disclosure of delinquent filers pursuant to Item 405 of Regulation S-B contained in this form, and no disclosure will be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-KSB or any amendment to this Form 10-KSB. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

State issuer's revenues for its most recent fiscal year: **\$77.3 million.**

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity as of September 30, 2007: \$20,732,656

State the number of shares outstanding of each of the issuer's classes of common stock as of September 30, 2007: 54,837,254

Documents incorporated by reference: Items 9, 10, 11, 12 and 14 of Part III of this Form 10-KSB, which incorporate by reference the issuer's 2007 Proxy Statement.

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**Harris/Posner Financing**

In order to complete the purchase of Method IQ, we arranged financing with Mel Harris and Steven Posner. On December 22, 2005, Charys and Billy V. Ray, Jr., our chief executive officer, executed a securities purchase agreement with Messrs. Harris and Posner pursuant to which they provided funding of \$1,000,000 to Charys. In consideration for this funding, we issued to them:

- A \$1,000,000 secured convertible debenture, which was converted into 1,565,000 shares of our common stock on May 26, 2006; and
- Warrants to purchase an aggregate of 250,000 shares of our common stock. The warrants provide for an exercise period of three years, expiring on December 22, 2008, with an exercise price equal to the lower of: (i) \$0.80 per share of the common stock; (ii) 120 percent of the average closing bid price for the five trading days immediately preceding December 22, 2005; or (iii) 80 percent of the lowest closing bid price for the five trading days immediately preceding the date of exercise.

We also agreed to file a registration statement with respect to the resale of the 1,565,000 shares issued upon the conversion of the secured debenture and the 250,000 shares underlying the warrants. In addition, we agreed to use our best efforts to have the registration statement declared effective by the Securities and Exchange Commission by May 15, 2006, but in no event later than June 13, 2006. Since we have not fulfilled this obligation by the required deadline, we are in default under the registration rights agreement. As of the date of this Annual Report, we have not received any claim or notice of default under the registration rights agreement.

**Series D Preferred Stock Financing**

On May 19, 2006, we executed a securities purchase agreement with various investors whereby the investors purchased 1,300 shares of our newly created Series D Preferred Stock, having an aggregate stated value of \$13,000,000, for a total consideration of \$12,200,000, reflecting an issuance discount in the aggregate amount of \$800,000. The shares of Series D Preferred Stock were convertible into an aggregate of 5,777,778 shares of our common stock at a conversion price of \$2.25 per share.

In addition, the investors were issued warrants to purchase 4,333,332 shares of our common stock. Each warrant has an expiration date of five years from the date of issue and was initially exercisable at a price of \$6.24, subject to adjustments. However, pursuant to the forbearance letter discussed below, the number of shares issuable upon exercise of the warrants was increased to 12,017,774, and the exercise price was reduced to \$2.25 per share, subject to adjustment.

The Series D Preferred Stock accrued special payments representing amortization of principal at the rate of \$416.67 per month per share, beginning on November 6, 2006, the first of which was due on December 1, 2006. Pursuant to the forbearance letter discussed below, the date for the initial payment was extended until January 5, 2007. However, no special payments were made. Shares of Series D Preferred Stock also accrued a quarterly cash dividend on their stated value of \$10,000 per share at a rate of 8% per annum.

The holders of Series D Preferred Stock were granted registration rights with respect to the shares of common stock underlying the preferred stock and warrants, which required us to file a registration statement under the Securities Act of 1933 within 90 days of May 19, 2006, and to have it declared effective within 90 days thereafter. We defaulted on our obligation to file a registration statement and, on November 8, 2006, delivered a forbearance letter to the holders of the Series D Preferred Stock, which sets forth the terms of a mutual understanding that was reached between us and the holders of the Series D Preferred Stock.

Pursuant to the terms of the forbearance letter, the holders of the Series D Preferred Stock agreed to forbear from exercising their rights and remedies with respect to our failure to file timely and have declared effective a registration statement. Specifically, the holders of the Series D Preferred Stock agreed to refrain from declaring an event of default, triggering event, redemption, other default or acceleration, or otherwise demand payment of any liquidated damages payable under our certificate of designation for the Series D Preferred Stock and the related registration rights agreement, securities purchase agreement, warrants and other documents dated May 19, 2006 and entered into in connection with the Series D Preferred Stock financing until January 5, 2007.



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- On May 15, 2007, Crochet & Borel Services, Inc. issued a promissory note to Mike Thomas in the amount of \$1,600,000 payable \$100,000 down and the balance in 60 equal monthly installments of principal and accrued interest of \$28,999 commencing June 15, 2007. This note represents payment in full of amounts due for services rendered pursuant to a Consulting Agreement dated May 1, 2005. Crochet & Borel Services, Inc. has not made the payment due July 1, 2007 or any subsequent payments.
- On May 18, 2007, Charys executed a Note Purchase Agreement with Imperium Master Fund, Ltd. Pursuant to the agreement we issued our Senior Secured Note in the principal amount of \$690,000. The note is due May 18, 2008 and bears interest at the rate of 12% per annum. The note ranks senior to all outstanding and future indebtedness of Charys except as otherwise set forth in the agreement. The note is guaranteed by each of our subsidiaries and secured pursuant to the terms of a Security Agreement. The purpose of the loan was for working capital.
- On June 4, 2007, we filed an application with the American Stock Exchange to list the shares of our common stock for trading on the exchange. As of the date of this Annual Report, we have not received a notification that our shares have been accepted for trading.
- On June 29, 2007, Cotton Commercial USA, L.P. executed a Note Purchase Agreement with Imperium Master Fund, Ltd. Pursuant to the agreement, the Cotton Commercial USA, L.P. issued its Senior Secured Note in the principal amount of \$3,040,000. The note is due August 13, 2007 and bears interest at the rate of 8.25% per annum and is guaranteed by Charys and each of the Cotton Companies and secured pursuant to the terms of a Security Agreement executed by the Cotton Companies. The purpose of the loan was for working capital. We have not made the August 15, 2007 payment due on the note on which date the principal amount and all accrued interest was due.
- On July 10, 2007, we received Consents from the holders of the McMahan Securities with respect to the adoption of a proposed amendment to the Indenture and a consent to a refinancing of "Existing Secured Indebtedness" as defined in the Indenture as described in that certain Consent and Amendment to Indenture sent to the holders. The purpose of the solicitation of the Consents was to amend the Indenture to enable Charys to re-allocate the \$35,000,000 of "Existing Secured Indebtedness" currently available to our Crochet & Borel subsidiary among our other subsidiaries in order to implement the reorganization of our business into two distinct business operations, disaster/remediation, and telecommunications and construction activities related thereto. In order to permit the requested ability to allocate "Existing Secured Indebtedness" it was necessary to amend the definition of "Existing Secured Indebtedness" as described in the Consent and Amendment.
- In addition, Charys has refinanced its Series D preferred stock in exchange for Subordinated Unsecured Convertible Notes in an aggregate amount of \$15,037,278, pursuant to that certain Securities Exchange Agreement dated as of April 30, 2007, by and among Charys and the investors listed on the Schedule of Investors attached thereto, all more fully described in a Form 8-K filed by Charys with the Securities and Exchange Commission on May 24, 2007 (the "Series D Transaction"). The Series D preferred stock provided for certain payments and other obligations by Charys. We felt it was in our best interests to incorporate all of these obligations into Subordinated Unsecured Convertible Notes and cancel the Series D preferred stock. We desired for the holders of the McMahan Notes to consent to the refinancing and exchange. We have not made the August 3, 2007 payment due on the note payable to one of the investors and we were late in the payment due on July 13, 2007 to that investor and subsequently have made no further payments to any of the investors. On October 23, 2007 one of the investors made a demand for redemption of the note to that investor in the original principal amount of 8,354,043.
- We acquired Cotton Holding 1, Inc., Cotton Commercial USA, L.P. and Cotton Restoration of Central Texas, LP (the "Cotton Companies") pursuant to a stock and limited partnership purchase agreement dated as of September 1, 2006, and amended on October 6, October 19, October 31, December 8, 2006 and February 23, 2007, for total consideration of 1,955,532 shares of our common stock (which have registration rights) and \$49,204,406 (composed of \$39,204,406 paid in cash and a promissory note in the original principal amount of \$10,000,000 bearing interest at the rate of 9% per annum). We amended and restated the promissory note on February 23 and June 25, 2007, and reduced the outstanding principal balance of the note to \$5,482,816, which will be payable in 36 equal monthly installments of \$175,943 each, beginning on September 1, 2007 and continuing on the first day of each month thereafter until August 1, 2010, when the entire amount shall be due and payable in full. We have not made the September 1, 2007 or the October 1, 2007 payment due on the note.



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*Series D Preferred Stock Financing*

On May 19, 2006, we executed a securities purchase agreement with various investors whereby the investors purchased 1,300 shares of our newly created Series D Preferred Stock, having an aggregate stated value of \$13,000,000, for a total consideration of \$12,200,000, reflecting an issuance discount in the aggregate amount of \$800,000. The shares of Series D Preferred Stock were convertible into an aggregate of 5,777,778 shares of our common stock at a conversion price of \$2.25 per share.

In addition, the investors were issued warrants to purchase 4,333,332 shares of our common stock. Each warrant has an expiration date of five years from the date of issue and was initially exercisable at a price of \$6.24, subject to adjustments. However, pursuant to the forbearance letter discussed below, the number of shares issuable upon exercise of the warrants was increased to 12,017,774, and the exercise price was reduced to \$2.25 per share, subject to adjustment. As the Company allocated the proceeds between the debt issuances and the related warrants as required by APB 14, "Accounting for Convertible Debt and Debt Issued with Stock Purchase Warrants", the imputed interest rate calculated on the resulting discount of the notes was 66.8%, which combined with the 0% stated rate results in an effective interest rate of 66.8%.

The Series D Preferred Stock accrued special payments representing amortization of principal at the rate of \$416.67 per month per share, beginning on November 6, 2006, the first of which was due on December 1, 2006. Pursuant to the forbearance letter discussed below, the date for the initial payment was extended until January 5, 2007. However, no special payments were made. Shares of Series D Preferred Stock also accrued a quarterly cash dividend on their stated value of \$10,000 per share at a rate of 8% per annum.

The holders of Series D Preferred Stock were granted registration rights with respect to the shares of common stock underlying the preferred stock and warrants, which required us to file a registration statement under the Securities Act of 1933 within 90 days of May 19, 2006, and to have it declared effective within 90 days thereafter. We defaulted on our obligation to file a registration statement and, on November 8, 2006, delivered a forbearance letter to the holders of the Series D Preferred Stock, which sets forth the terms of a mutual understanding that was reached between us and the holders of the Series D Preferred Stock.

Pursuant to the terms of the forbearance letter, the holders of the Series D Preferred Stock agreed to forbear from exercising their rights and remedies with respect to our failure to file timely and have declared effective a registration statement. Specifically, the holders of the Series D Preferred Stock agreed to refrain from declaring an event of default, triggering event, redemption, other default or acceleration, or otherwise demand payment of any liquidated damages payable under our certificate of designation for the Series D Preferred Stock and the related registration rights agreement, securities purchase agreement, warrants and other documents dated May 19, 2006 and entered into in connection with the Series D Preferred Stock financing until January 5, 2007.

We used \$5,236,543 of the net proceeds of sale of our securities in connection with the Unit Purchase Agreement with McMahan Securities Co. L.P. described elsewhere in this Annual Report to purchase and retire 400 shares of our Series D Preferred Stock valued at \$4,000,000, plus \$1,236,543 in accrued interest and redemption premiums.

Pursuant to a Securities Exchange Agreement dated as of April 30, 2007, we issued to three investors our subordinated unsecured convertible notes in an aggregate amount of \$15,037,278, which amount represented the then value of our Series D Preferred Stock, including accrued interest and redemption premiums, in exchange for the remaining 900 shares of our Series D Preferred Stock. Each holder of such convertible notes is entitled to convert any portion of its outstanding and unpaid note into fully paid and nonassessable shares of our common stock. The number of shares to be issued shall be determined by dividing the amount of the note to be converted by \$2.25, subject to adjustment as provided in the note. We were late in the payment due on July 13, 2007 to one investor, have not made the August 3, 2007 payment due on the note payable to one of the investors, and have not made the payments due September 3, 2007 or October 3, 2007 to any investor. Pursuant to the terms of the notes, a default under one note is a default under all three notes, even if the all of the payments were timely made with respect to the other two notes. However, as of the date of this Annual Report, none of the investors have indicated an intention to institute any action against the Company.

In addition, and without limitation of any other rights and remedies under the foregoing notes, upon the first occurrence of a default under the Note, without regard to any cure period thereunder, and upon the expiration of each additional 30 day thereafter during which the event of default continues, in whole or in part (such late payment, the "Delinquent Payment Amount"), the Company shall issue a Warrant to the Holder for such number of shares of Common Stock of the Company equal to the Delinquent Payment Amount at such time divided by the Conversion Price. Upon the second occurrence of an

Event of Default, without regard to any cure period thereunder, the Company shall issue a Warrant to the Holder for such number of shares of Common Stock of the Company equal to the outstanding principal balance of the Note at such time divided by the Conversion Price. As a result of our default, the investors have a right to 3,689,648 Default Warrant Shares at an exercise price of \$5.00 per share.

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